

months, or revoke the registration of such transfer agent, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such denial, censure, placing of limitations, suspension, or revocation is in the public interest and that such transfer agent has willfully violated or is unable to comply with any provision of this section or section 78q of this title or the rules or regulations thereunder.”, redesignated subpars. (B) and (C) of former par. (3) as subpars. (A) and (B), respectively, of new par. (4), and added subpar. (C) to such par. (4).

Subsec. (d)(3)(B). Pub. L. 100-181, §322(6), substituted “clearing agency, transfer agent, or person associated with a transfer agent” for “clearing agency or transfer agent”.

Subsec. (d)(4). Pub. L. 100-181, §322(7), substituted “, transfer agent, or person associated with a transfer agent,” for “or transfer agent”.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101-429, set out in a note under section 77g of this title.

#### EFFECTIVE DATE

Section effective June 4, 1975, except for subsecs. (b) and (c) which are effective 180 days after June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

#### CLEARANCE AND SETTLEMENT OF TRANSACTIONS; REPORT TO CONGRESS

Section 8(b) of Pub. L. 101-432 directed Securities and Exchange Commission, in consultation with Commodity Futures Trading Commission, Board of Governors of the Federal Reserve System, and other relevant regulatory authorities, to examine progress toward establishing linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options, and to submit to Congress, not later than 2 years from Oct. 16, 1990, a report detailing and evaluating such progress.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77c, 78c, 78o, 78q, 78s, 78u-2, 78y of this title; title 7 section 2; title 11 section 101.

### § 78q-2. Automated quotation systems for penny stocks

#### (a) Findings

The Congress finds that—

(1) the market for penny stocks suffers from a lack of reliable and accurate quotation and last sale information available to investors and regulators;

(2) it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to improve significantly the information available to brokers, dealers, investors, and regulators with respect to quotations for and transactions in penny stocks; and

(3) a fully implemented automated quotation system for penny stocks would meet the information needs of investors and market participants and would add visibility and regulatory and surveillance data to that market.

#### (b) Mandate to facilitate establishment of automated quotation systems

##### (1) In general

The Commission shall facilitate the widespread dissemination of reliable and accurate

last sale and quotation information with respect to penny stocks in accordance with the findings set forth in subsection (a) of this section, with a view toward establishing, at the earliest feasible time, one or more automated quotation systems that will collect and disseminate information regarding all penny stocks.

#### (2) Characteristics of systems

Each such automated quotation system shall—

(A) be operated by a registered securities association or a national securities exchange in accordance with such rules as the Commission and these entities shall prescribe;

(B) collect and disseminate quotation and transaction information;

(C) except as provided in subsection (c) of this section, provide bid and ask quotations of participating brokers or dealers, or comparably accurate and reliable pricing information, which shall constitute firm bids or offers for at least such minimum numbers of shares or minimum dollar amounts as the Commission and the registered securities association or national securities exchange shall require; and

(D) provide for the reporting of the volume of penny stock transactions, including last sale reporting, when the volume reaches appropriate levels that the Commission shall specify by rule or order.

#### (c) Exemptive authority

The Commission may, by rule or order, grant such exemptions, in whole or in part, conditionally or unconditionally, to any penny stock or class of penny stocks from the requirements of subsection (b) of this section as the Commission determines to be consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets.

#### (d) Commission reporting requirements

The Commission shall, in each of the first 5 annual reports (under section 78w(b)(1) of this title) submitted more than 12 months after October 15, 1990, include a description of the status of the penny stock automated quotation system or systems required by subsection (b) of this section. Such description shall include—

(1) a review of the development, implementation, and progress of the project, including achievement of significant milestones and current project schedule; and

(2) a review of the activities of registered securities associations and national securities exchanges in the development of the system.

(June 6, 1934, ch. 404, title I, §17B, as added Pub. L. 101-429, title V, §506, Oct. 15, 1990, 104 Stat. 955.)

#### REFERENCES IN TEXT

Section 78w(b)(1) of this title, referred to in subsec. (d), was omitted from the Code. For further details related to reports referred to in subsec. (d), see Codification note set out under section 78w of this title.

#### EFFECTIVE DATE

Section effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement,

see section 1(c)(1), (2) of Pub. L. 101-429, set out in an Effective Date of 1990 Amendment note under section 77g of this title.

#### **§ 78r. Liability for misleading statements**

##### **(a) Persons liable; persons entitled to recover; defense of good faith; suit at law or in equity; costs, etc.**

Any person who shall make or cause to be made any statement in any application, report, or document filed pursuant to this chapter or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, shall be liable to any person (not knowing that such statement was false or misleading) who, in reliance upon such statement, shall have purchased or sold a security at a price which was affected by such statement, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading. A person seeking to enforce such liability may sue at law or in equity in any court of competent jurisdiction. In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit, and assess reasonable costs, including reasonable attorneys' fees, against either party litigant.

##### **(b) Contribution**

Every person who becomes liable to make payment under this section may recover contribution as in cases of contract from any person who, if joined in the original suit, would have been liable to make the same payment.

##### **(c) Period of limitations**

No action shall be maintained to enforce any liability created under this section unless brought within one year after the discovery of the facts constituting the cause of action and within three years after such cause of action accrued.

(June 6, 1934, ch. 404, title I, § 18, 48 Stat. 897; May 27, 1936, ch. 462, § 5, 49 Stat. 1379.)

#### **REFERENCES IN TEXT**

This chapter, referred to in subsec. (a), was in the original "this title". See References in Text note set out under section 78a of this title.

#### **AMENDMENTS**

1936—Subsec. (a). Act May 27, 1936, inserted "or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title".

#### **SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 78l, 78hh, 78hhh, 79p of this title.

#### **§ 78s. Registration, responsibilities, and oversight of self-regulatory organizations**

##### **(a) Registration procedures; notice of filing; other regulatory agencies**

(1) The Commission shall, upon the filing of an application for registration as a national securi-

ties exchange, registered securities association, or registered clearing agency, pursuant to section 78f, 78o-3, or 78q-1 of this title, respectively, publish notice of such filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application. Within ninety days of the date of publication of such notice (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant such registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred eighty days of the date of a publication of notice of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if it finds that the requirements of this chapter and the rules and regulations thereunder with respect to the applicant are satisfied. The Commission shall deny such registration if it does not make such finding.

(2) With respect to an application for registration filed by a clearing agency for which the Commission is not the appropriate regulatory agency—

(A) The Commission shall not grant registration prior to the sixtieth day after the date of publication of notice of the filing of such application unless the appropriate regulatory agency for such clearing agency has notified the Commission of such appropriate regulatory agency's determination that such clearing agency is so organized and has the capacity to be able to safeguard securities and funds in its custody or control or for which it is responsible and that the rules of such clearing agency are designed to assure the safeguarding of such securities and funds.

(B) The Commission shall institute proceedings in accordance with paragraph (1)(B) of this subsection to determine whether registration should be denied if the appropriate regulatory agency for such clearing agency notifies the Commission within sixty days of the date of publication of notice of the filing of such application of such appropriate regulatory agency's (i) determination that such clearing agency may not be so organized or have the capacity to be able to safeguard securities or funds in its custody or control or for which it is responsible or that the rules of such clearing agency may not be designed to assure the safeguarding of such securities and funds and (ii) reasons for such determination.

(C) The Commission shall deny registration if the appropriate regulatory agency for such clearing agency notifies the Commission prior to the conclusion of proceedings instituted in accordance with paragraph (1)(B) of this sub-